

SPECIAL BOARD OF ADJUSTMENT NO. 1048

Award No. 102

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JUN 11 2001

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SOUTHEASTERN REGION

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of C. A. Davis, et al., for the difference between straight time and overtime for the Christmas Eve, Christmas, New Year's Eve and New Year's holidays (equivalent of 16 hours straight time), and on behalf of R. S. Williams, et al., for the difference between straight time and overtime for the President's Day holiday (equivalent of 4 hours straight time each) and for the Memorial Day holiday (equivalent of 4 hours straight time each).

(Carrier's Files MW-WHEL-99-1, MW-WHEL-99-2, MW-WHEL-99-3)

Findings and Opinion:

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This dispute pertains to a combination of claims involving numerous Claimants¹ who are hourly rated employees at the Wheelersburg Terminal, which is a Carrier facility for mixing and loading coal located in Wheelersburg, Ohio. The Claimants listed in MW-WHEL-99-1 were regularly assigned as operators whose workweek began on Saturday and ended on Wednesday, with Thursday and Friday as designated rest days. During the week of December 19, 1998, these Claimants worked eight hours each day of their workweek for which they were compensated at the straight time rate for forty hours. In addition, the Claimants qualified for holiday pay and were paid eight hours at the straight time rate for the Christmas Eve holiday on Thursday, December 24, 1998, and for the Christmas Day holiday on Friday, December 25, 1998. None of the Claimants here worked on either holiday, nor did they work in excess of forty straight time hours during this workweek. Similarly, the same Claimants during the work week of December 26, 1998 worked eight hours each day from Saturday through Wednesday and received forty hours' pay at the straight time rate. They qualified for holiday pay and were paid eight hours at the straight time rate for the New Year's Eve holiday on Thursday, December 31, 1998 and for the New Year's Day holiday on Friday, January 1, 1999. The Claimants did not work on either holiday or perform work in excess of forty straight time hours during this workweek.

¹ To avoid unnecessary duplication, these claims were progressed separately but consolidated for presentation before this Board.

Likewise, the Claimants listed in MW-WHEL-99-2 and MW-WHEL-99-3 were regularly assigned operators whose workweek began on Thursday and ended on Sunday, with Tuesday and Wednesday as designated rest days. During the workweeks of February 11, 1999 and May 27, 1999, respectively, these Claimants worked ten hours each day from Thursday through Sunday, and received forty hours' pay at the straight time rate.² They also qualified for holiday pay and were paid eight hours at the straight time rate for the President's Day holiday on Monday, February 15, 1999, and for the Memorial Day holiday on Monday, May 31, 1999. Here, too, none of the Claimants worked on either holiday, nor did they perform service in excess of forty straight time hours during the respective work weeks of February 11, 1999 and May 27, 1999.

The Organization submitted claims on behalf of the Claimants for the difference between the straight time rate the Carrier paid them on each of the six designated hours and the overtime rate under Section 4 of the Wheelersburg Terminal Agreement, which provides as follows:

Employees performing work of more than forty (40) straight time hours, including vacation and holiday pay, in a week will be paid time and one-half for all work in excess of forty (40) straight time hours in the week. Opportunity for overtime work will continue to be offered first to the employee with the least overtime worked. Mandatory overtime work will be performed by employees in order of inverse seniority on the involved crew.

From the Organization's perspective, the Claimants in each claim worked their regular assignments, for which they received forty hours' pay during the weeks involved and were thus entitled to receive pay at the overtime rate for the holidays that fell on their designated rest day in accordance with the controlling provisions of the cited Agreement. Simply put, the Organization contends that the holidays in question increased the Claimants' hours in excess of the maximum forty straight time hours in the workweek because Section 4 of the Wheelersburg Terminal Agreement includes vacation and holiday pay in the calculation of the regular forty hour workweek.

Conversely, the Carrier posits that Section 4 of the Wheelersburg Terminal Agreement is inapplicable in the instant matter because the Claimants did not fulfill the requirements thereof to qualify for any overtime payment in the workweeks in question; i.e., they worked only forty straight time hours prior to the holiday. Rather, the Carrier asserts that the Claimants were properly paid eight hours straight time pay for each of the six designated holidays in accordance with Rule 38 of the NW-Wabash Agreement.³ In the Carrier's judgment, Rule 38 applies in this instance because the Claimant were all hourly rated and

² Due to operational requirements at the Wheelersburg Terminal, the Carrier, under the December 17, 1996 Wheelersburg Terminal Agreement, was granted additional flexibility in establishing assignments. As indicated hereinabove, assignments at this Terminal may be established to work in excess of eight hours (i.e., up to ten hours) in a workday without the payment of overtime.

³ Maintenance of Way employees at the Wheelersburg Terminal are covered by the Wheelersburg Terminal Agreement that incorporates certain rules of the July 1, 1986 NW-Wabash Agreement, including Rules 37 and 38 which deal with holiday pay and pay for working on a holiday.

regularly assigned employees who did not work any of the holidays for which they seek overtime pay.⁴ Nor, in the Carrier's opinion, would Rule 37 of the NW-Wabash Agreement apply, since none of the Claimants was assigned or called to work the noted holidays.⁵ Yet, the Carrier submits, had they been called to work any of these holidays, they would only have been entitled to overtime compensation limited to actual service performed and paid at the straight time rather than time and one-half.

The Board has carefully considered the parties' respective, albeit conflicting, arguments and finds that the Claimants were not entitled to any overtime compensation for the six designated holidays (i.e., the difference between straight time pay they received and time and one-half which they seek for each holiday) under Section 4 of the Wheelersburg Terminal Agreement. As the Carrier recounted without contradiction, the provisions under Section 4 are unique and are not included in any of the Organization's other Agreements. Although Section 4 provides for the payment of overtime at time and one-half for all work performed in excess of forty straight time hours in the workweek, including vacation and holiday pay, such overtime is not for the vacation day or holiday per se. Instead, overtime at time and one-half is paid where the covered employee actually works beyond the forty straight time hours of the assignment. Under this circumstance, the employee will receive the overtime payment for the time worked in excess of forty hours.

Here, the Claimants were given the opportunity to work their entire workweek and were not compelled to work on either of their rest days which happened to fall on holidays. There is no provision in Section 4 of the Wheelersburg Terminal Agreement, or, as noted, in any other Agreement, which provides for the payment of overtime for time not worked simply because a holiday falls on a designated rest day of the Claimants' assignments. In sum, Section 4 is clear that while holiday pay may be included in the

⁴ Rule 38 of this Agreement adopts Article II of the August 21, 1954 National Agreement, as amended (commonly referred to as the "National Holiday Agreement"), which, in relevant part, states:

Section 1: Subject to the qualifying requirements contained in Section 3 hereof, and to the conditions hereinafter provided, each hourly and daily rated employees shall receive eight hours' pay at the pro rata hourly rate for each of the following enumerated holidays:

New Year's Day
 Washington's Birthday
 * * * *
 Memorial Day
 * * * *
 Christmas Eve
 Christmas Day
 New Year's Eve

- (a) Holiday pay for regularly assigned employees shall be at the pro rata rate of the position to which assigned.

⁵ Rule 37, in pertinent part, reads as follows:

Except as otherwise provided in these rules, employees assigned, notified or called to work on the following holidays, *** shall be paid on the actual minute basis for work performed at the rate of time and one-half with a minimum allowance of 2 hours and 40 minutes or less. The provisions of this rule shall not apply to employees who work on holidays at their own request, in which event they shall be paid at the pro rata rate.

calculation of forty straight time hours, the only time that overtime is paid is for hours the employee actually works after earning the maximum straight time hours of compensation. Suffice it to say that none of the Claimants performed service on any of the holidays in question to trigger the payment of the overtime rate.

AWARD

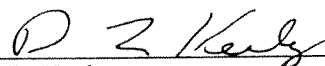
Claims denied.



C. P. Fischbach
Chairman and Neutral Member



R. A. Lau
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on April 18, 2001